



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C. 20226

Number: 75-20

Date: November 5, 1975

## CONTRACTS TO PURCHASE ALCOHOLIC BEVERAGES

Proprietors of Distilled Spirits Plants,  
Wineries, Breweries, Wholesale Liquor and  
Beer Dealers and Others Concerned:

Purpose. This circular is issued to advise proprietors of the possibility of being found in violation of section 5 of the Federal Alcohol Administration Act by virtue of sales contracts obtained from the U. S. military or other trade buyers.

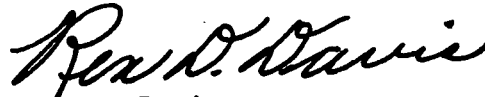
Background. The Department of Defense generally requires that purchases of goods and articles for resale at military installations be made in such manner and under such conditions as shall obtain the most advantageous terms of purchase. Recently, officers' clubs, consolidated package stores, and other nonappropriated fund activities at some military bases have sought to implement this requirement by soliciting bids from wholesale liquor dealers for the sale of their beer or other alcoholic beverages to such activities, and then entering into contracts to purchase the activities' requirements of such beverages from the dealers submitting the lowest bids. As in previous situations where commercial dealers have attempted to obtain certain purchasing advantages through contracts with wholesalers and other proprietors, the contracts being awarded by the Armed Forces with respect to distilled spirits, wines, and beer have been found to conflict with the proscriptions in section 5 of the FAA Act.

Areas of Conflict. It is recognized that a primary purpose for accepting bids and awarding contracts to purchase is to obtain the most favorable price. However, discounts offered to obtain such contracts would constitute violations of the FAA Act if the transactions involved fall within the provisions of sections 5(a) through 5(d) of the Act. Thus, while the Bureau would not object to the customary discounts being given with respect to volume purchases, a purchasing arrangement could result in a dealer being found in violation of the FAA Act if it is determined that the discount is a subterfuge for granting financial assistance, that a purchasing agreement establishing an exclusive outlet has been made, or that the transactions involve any of the other practices proscribed by the above cited sections of the Act.

If, in order to secure the desired discount, the retailer (including nonappropriated fund activities on military bases) agrees to buy all or any portion of his future requirements for alcoholic beverages from the wholesaler with whom the contract is made, such wholesaler, on accepting the contract, will have established an exclusive outlet proscribed by section 5(a) of the FAA Act, and will have violated the quota sales prohibition of section 5(b)(7) of the Act.

Proprietors should bear in mind that several opinions of this Bureau have interpreted the phrase, "To require, by agreement or otherwise...", as including mere contractual agreements unaccompanied by any coercion. Also, the mere fact that the trade buyer solicits the transactions does not insulate a permittee or brewer from liability under section 5 of the FAA Act.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N. W., Washington, D. C. 20226.

  
Rex D. Davis  
Director

Department of the Treasury  
Bureau of Alcohol, Tobacco and Firearms  
Washington, D.C. 20226

Official Business  
Penalty for Private Use, \$300

Postage and Fees Paid  
Department of the Treasury  
Treas 564

